

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

WASHINGTON CITIES INSURANCE  
AUTHORITY,

Plaintiff,

v.

IRONSHORE INDEMNITY, INC.,

Defendant.

No. 2:19-cv-00054-RAJ

ORDER

**I. INTRODUCTION**

This matter comes before the Court on Plaintiff's Motion for Leave to File First Amended Complaint. Dkt. # 37. Defendant opposes this motion. Dkt. # 39. For the reasons below, Plaintiff's motion is **GRANTED**.

**II. BACKGROUND**

Plaintiff Washington Cities Insurance Authority ("WCIA" or "Plaintiff") filed suit against its reinsurer, Defendant Ironshore Indemnity, Inc. ("Defendant"), on January 11, 2019. Dkt. # 1. The claim at issue arises from Defendant's denial of coverage for a 2018 settlement related to a separate police misconduct lawsuit, which Plaintiff alleges falls within Defendant's reinsurance policy. Dkt. # 37 at 1-2. In its Complaint, Plaintiff

1 asserted a breach of contract claim, requested equitable estoppel to prevent Defendant  
 2 from asserting policy defenses to coverage, and sought declaratory relief confirming that  
 3 the arbitration provision, as well as the choice of law and venue provisions in its  
 4 insurance contract with Defendant were void. Dkt. # 1 at 9-10.

5 Plaintiff filed a motion for summary judgment regarding arbitrability and choice  
 6 of law on May 23, 2019. Dkt. # 17. That same day, Defendant filed a motion to compel  
 7 arbitration. On March 6, 2020, the Court denied Defendant's motion to compel  
 8 arbitration and granted Plaintiff's motion, which held, among other things, that  
 9 Washington law applied to Plaintiff's claims, as opposed to New York law, as alleged by  
 10 Defendant. Dkt. # 32 at 7. On March 25, 2020, the Court issued an order resetting trial  
 11 date and related dates, including the deadline to file amended pleadings. Dkt. # 36. The  
 12 new deadline to file amended pleadings was set for May 23, 2020. *Id.* at 1.

13 On May 18, 2020, the parties engaged in a telephone conference in which Plaintiff  
 14 sought a stipulation for an order to amend its complaint. Dkt. # 37 at 2. Specifically,  
 15 Plaintiff sought to remove its request for declaratory relief, which the Court had granted,  
 16 and to include two additional claims: (1) bad faith claims handling and (2) violations of  
 17 the Washington Insurance Fair Conduct Act ("IFCA"), RCW 48.30.015. *Id.* at 4.  
 18 Plaintiff had notified Defendant of its IFCA claim on May 6, 2020. *Id.* at 5. The parties  
 19 could not reach an agreement, and, on May 21, Plaintiff filed this motion to amend its  
 20 complaint. Dkt. # 37.

### 21 **III. LEGAL STANDARD**

22 If the time for amendment as a matter of right has passed, a party may amend its  
 23 pleading with the opposing party's written consent or the court's leave. Fed. R. Civ. P.  
 24 15(a)(2). "The court should freely give leave when justice so requires." *Id.* Under Rule  
 25 15, the policy favoring amendments should be applied liberally. *Johnson v. Mammoth*  
 26 *Recreations, Inc.*, 975 F.2d 604, 607 (9th Cir. 1992). "[L]eave to amend should be  
 27 granted unless amendment would cause prejudice to the opposing party, is sought in bad

1 faith, is futile, or creates undue delay.” *Id.* Between these factors, “the consideration of  
 2 prejudice to the opposing party [] carries the greatest weight.” *Eminence Capital, LLC v.*  
 3 *Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003). In the absence of prejudice or a  
 4 strong showing of the other factors, “there exists a presumption under Rule 15(a) in favor  
 5 of granting leave to amend.” *Id.* “Undue delay by itself [] is insufficient to justify  
 6 denying a motion to amend.” *Bowles v. Reade*, 198 F.3d 752, 758 (9th Cir. 1999).

7 Once the district court has set a schedule, however, it may be modified only for  
 8 good cause and with the judge’s consent. Fed. R. Civ. P. 16(b)(4). The “good cause”  
 9 standard under Rule 16 focuses primarily on the diligence of the party seeking the  
 10 amendment. *See Johnson*, 975 F.2d at 608. A court may find good cause if the pretrial  
 11 deadline “cannot reasonably be met despite the diligence of the party seeking the  
 12 extension.” Fed. R. Civ. P. 16 advisory committee’s notes (1983 amendment). If a party  
 13 seeks to amend a pleading after the deadline for amending pleadings in the scheduling  
 14 order has passed, the party must first show good cause under Rule 16, and if successful, it  
 15 must then demonstrate that amendment is proper under rule 15. *Id.*

#### 16 IV. DISCUSSION

17 Defendant argues that Plaintiff’s motion for leave to amend its complaint by  
 18 adding a bad faith claim and an IFCA claim cannot succeed without a showing of good  
 19 cause pursuant to Rule 16. Dkt. # 39 at 10. The Court will consider each additional  
 20 claim in turn.

##### 21 A. Common Law Bad Faith Claim

22 Plaintiff filed the instant motion for leave to amend its complaint on May 21,  
 23 2020, two days prior to the deadline for amending pleadings. Dkt. # 37. Plaintiff did not  
 24 move the Court to modify the case schedule. Defendant does not argue that Plaintiff  
 25 violated the case schedule by adding the bad faith claim. Therefore, Plaintiff’s motion  
 26 for leave to amend its complaint to add a bad faith claim is considered under Rule 15.

Defendant argues that Plaintiff's motion is a result of undue delay, which, alone, provides a valid reason for denying leave to amend. The Court disagrees. *See Bowles v. Reade*, 198 F.3d 752, 758 (9th Cir. 1999) ("Undue delay by itself [] is insufficient to justify denying a motion to amend."). Indeed, in *Texaco, Inc. v. Ponsoldt*, 939 F.2d 794, 799 (9th Cir.1991)—the case cited by Defendant in support of this proposition—the Ninth Circuit concluded that plaintiff's undue delay to amend until *after* discovery was over and just four and a half months before the trial date would have unreasonably prejudiced the defendant. Here, following the Court's modification of its case schedule, the deadline for the completion of discovery is more than ten months away. The Court finds, therefore, that Defendant will not be prejudiced by the amendment. Further, Defendant does not allege, and the Court does not find any evidence, that Plaintiff's amendment is sought in bad faith or that the amendment is futile. In the absence of these factors, the Court concludes that Plaintiff's motion for leave to amend its complaint should be granted in line with the presumption under Rule 15(a) in favor of granting leave to amend. *See Eminence Capital*, 316 F.3d at 1052.

#### **B. Washington Insurance Fair Conduct Act Claim**

IFCA permits a party that is unreasonably denied a claim for coverage by an insurer to bring a claim to recover the actual damages sustained. *See* RCW 48.30.015. A party filing an IFCA claim must provide written notice of the basis for the cause of action to the insurer twenty days prior to filing the action. RCW 48.30.015(8)(a). IFCA's pre-suit notice provision has been construed by courts as a mandatory condition precedent to an IFCA lawsuit. *MKB Constructors v. Am. Zurich Ins. Co.*, 49 F. Supp. 3d 814, 840 (W.D. Wash. 2014).

Defendant here asserts that Plaintiff failed to provide the requisite 20-day notice prior to moving to add its IFCA claim. Dkt. # 39 at 5. It is undisputed that Plaintiff mailed Defendant notice of its IFCA claim on May 6, 2020. *Id.*; Dkt. # 37 at 5. Defendant claims that, including the three days which the statute allows for mailing,

1 Plaintiff could not validly amend its Complaint to include the IFCA claim until June 2,  
2 2020. *Id.* Because this date fell after the May 23, 2020 deadline for amended pleadings,  
3 Defendant argues, Plaintiff violated the case schedule and must establish good cause to  
4 amend its complaint. The Court disagrees.

5 Plaintiff did not file an IFCA claim on May 21, 2020. On that day, Plaintiff  
6 moved the Court *for permission* to file an IFCA claim, but no additional claim had been  
7 filed. Indeed, the Court could not have considered the Plaintiff's motion to amend until  
8 June 12, 2020 at the earliest pursuant to LCR 7(d), which would have given Defendant  
9 more than 20 days' notice. The Court therefore finds that Plaintiff provided Defendant  
10 with the required 20-day pre-suit notice pursuant to RCW 48.30.015(8)(a) and concludes  
11 that Plaintiff's motion for leave to amend was timely filed. All other factors related to  
12 the IFCA claim being the same as the factors related to Plaintiff's bad faith claim,  
13 discussed above, the Court **GRANTS** Plaintiff's motion for leave to amend its complaint.

#### 14 V. CONCLUSION

15 For the foregoing reasons, Plaintiff's Motion for Leave to File Amended  
16 Complaint is **GRANTED**. Dkt. # 37.

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18 DATED this 12th day of November, 2020.

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21 The Honorable Richard A. Jones  
22 United States District Judge  
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